

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kara Hughes	Team: Team # 4	CCRB Case #: 200301245	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 2:00 PM	Location of Incident: Corner 3rd Ave & 51st St, Manhattan	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Mon, 02/17/2003 12:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 02/17/2003 12:22 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT Keith Kopinski	00000	893246	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Keith Kopinski	Force: Lt. Keith Kopinski used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.LT Keith Kopinski	Abuse: Lt. Keith Kopinski refused to provide his name and shield number to § 87(2)(b) [REDACTED]	[REDACTED]

Synopsis

This complaint stems from the February 15, 2003 anti-war demonstration in Manhattan, which received extensive media coverage, hence the case was determined to be sensitive and placed on the agency's sensitive case list. § 87(2)(b) attended the anti-war demonstration; she was not arrested or issued a summons. At 3rd Avenue and 51st Street § 87(2)(b) was amidst a crowd that had been "penned in" by metal barricades, a parked RMP, officers on foot patrol and mounted police officers. As the crowd compacted, a number of demonstrators climbed over the parked RMP for egress. At the time of her interaction with Lt. Keith Kopinski, § 87(2)(b) was seated on the hood of the RMP; Lt. Kopinski stated that he requested multiple times that § 87(2)(b) get off of the car. When § 87(2)(b) did not comply, Lt. Kopinski stated that he approached the RMP, placed his hands on § 87(2)(b) and "slid" her off of the RMP's hood (*allegation a: force*). While Lt. Kopinski stated that he did not speak with § 87(2)(b) after removing her from the RMP, she recalls asking him to state his shield number to which he replied, "I don't have one" (*allegation b: abuse of authority*). A legal observer positioned nearby recorded Lt. Kopinski's name, but did not see the lieutenant's physical interaction with § 87(2)(b).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b), filed her complaint in a letter received by the CCRB on February 17, 2003 (*enc. 8a-d*). § 87(2)(b) attended the anti-war demonstration with her partner, § 87(2)(b) and later had conversation with legal observer § 87(2)(b) regarding the actions of Lt. Keith Kopinski, with whom she interacted at the intersection of 3rd Avenue and 51st Street. § 87(2)(b) described the pedestrian traffic on 3rd Avenue as very slow, adding that demonstrators were stopped and made to wait approximately thirty minutes at each intersection as they traveled north.

At approximately 2:00 PM, § 87(2)(b) was a part of a group "penned in" at 51st Street. Officers had placed physical barriers to the group's east. To the north were both mounted officers, and officers on foot. Officers on foot were standing in a line to the group's south. Mounted officers were standing to the west of the group in a "bow-shaped" formation. The mounted officers began moving towards the group, essentially pushing the group east. Members of the group were unable to freely travel eastward (on 51st Street) because there were wooden/metal barriers impeding their movement. § 87(2)(b) recalled that as the crowd became more compacted, no instructions were issued to the group.

After approximately twenty minutes, "the top part of" § 87(2)(b)'s body "began to get pushed backwards" such that she was unable to move her feet because her body was positioned at a severe angle. As the group continued to compact, § 87(2)(b) found herself "pushed against the front hood" of a police vehicle parked on north corner of 51st Street, facing west. She explained, "the top part of my body was pushed against the car, while my legs were sort of tangled in the crowd." After having "withdrawn" her legs from the crowd, § 87(2)(b) brought her shoe up to the car's bumper so that she could tie it; she was "half-sitting on the front hood of the parked [RMP]."

While fixing her shoe, § 87(2)(b) "felt [her]self pulled backward" from her "shoulder-area," and the collar of the hood of her jacket. She was "jerked – suddenly and violently – over the hood" towards the passenger side of the vehicle; she acknowledged that at some point she was "lying across the

hood of the car.” She was given no verbal command to get off, or move across the hood of the car. Because she was being pulled from behind, § 87(2)(b) stated that “at first” she was unable to see who was pulling her. After she was dragged across the hood, § 87(2)(b) was pulled further toward the ground such that her head was moving to hit the curb while her legs were (up) in the air. She recalled yelling “help!” prompting an unidentified male to say, “don’t worry, we’re catching you!” Multiple (unidentified) protesters caught § 87(2)(b) preventing her from hitting the curb.

When § 87(2)(b) looked up, she saw a uniformed officer standing over her and she realized that it was the uniformed officer who had been pulling her. § 87(2)(b) was then able to stand up. She read “Kopinski” off of the officer’s nameplate, reiterating it aloud. When she didn’t see the officer’s shield number and asked him to repeat the number, “Officer Kopinski” stated, “I don’t have a badge number,” in what § 87(2)(b) described as a “very angry/hostile manner.” § 87(2)(b) stated, “I’m going to report this” to which the officer replied, “go ahead!” § 87(2)(b) had no further interaction with “Officer Kopinski.” She testified that she did not ask “Officer Kopinski” why he pulled her across the car because “he seemed to be very enraged and [I] was afraid of him.” Instead, § 87(2)(b) spoke with a legal observer, § 87(2)(b) (identified as an observer by the black armband she was wearing), who had witnessed § 87(2)(b)’s interaction with Lt. Kopinski. § 87(2)(b) claimed that § 87(2)(b) had “seen the entire process – from the time that [she] was on top of the car to the time when [Lt.] Kopinski released me. § 87(2)(b) was in the crowd and happened to be standing a short distance from where § 87(2)(b) was standing.” After § 87(2)(b) and § 87(2)(b) exchanged email addresses, § 87(2)(b) left the intersection with § 87(2)(b) and had no further interaction with Lt. Kopinski.

Results of Investigation

At the time she filed her complaint, § 87(2)(b) provided contact information for both § 87(2)(b) and § 87(2)(b) the latter was contacted through the New York chapter of the National Lawyer’s Guild. § 87(2)(b) provided a statement to the CCRB. Despite multiple efforts made by this investigator throughout the course of this investigation, § 87(2)(b) failed to contact the CCRB and was therefore never interviewed. While § 87(2)(b) and § 87(2)(b) were unaware of Lt. Kopinski’s rank during their CCRB interviews, an NYPD personnel database searched disclosed that there is only one NYPD officer whose last name is “Kopinski.” Lt. Kopinski later confirmed that he was active at the corner of 51st Street and 3rd Avenue and confirmed that he had a physical interaction with one demonstrator.

Civilian Witness: § 87(2)(b)

§ 87(2)(b) a § 87(2)(b), was serving as a legal observer during the anti-war demonstration. § 87(2)(b) explained that as an observer, she was responsible for documenting the names and shield numbers of officers upon the request of demonstrators. § 87(2)(b) confirmed that her interaction with § 87(2)(b) was very brief and strictly limited to February 15, 2003. § 87(2)(b) was positioned on the east side of 3rd Avenue when demonstrators were halted at 51st Street. She described the same “pen” as § 87(2)(b) and recalled how the parked RMP’s front bumper formed the barricade on the northeast corner of the intersection. Like § 87(2)(b) § 87(2)(b) did not hear officers issue any directions or information about how long they might remain stopped at the intersection. Demonstrators “started scrambling over the hood of the car to get out of the crowd” which had begun to rapidly compact upon the mounted unit’s approach. § 87(2)(b) clarified that people “weren’t necessarily on their hands and knees” and instead were receiving some assistance from the crowd – whether it be a hand to hold after stepping on the bumper or being held up by others.” While watching the “scrambling” people, § 87(2)(b) noted an officer standing on the passenger side of the RMP (possibly Lt. Kopinski, § 87(2)(b) could not be certain) yelling at the crowd and “assisting [demonstrators] off the car as if they wanted to be there in the first place.” She could not recall the nature of the officer’s physical contact with these demonstrators but added that these people “were just trying to get away from the police horses and had no where to go.” “At some point the horses stopped pressuring people” although § 87(2)(b) was unsure of the circumstances that prompted this cessation.

§ 87(2)(b) recalled § 87(2)(b) approaching her and asking, “do you see what that man did, he was pulling people off the car.” During her CCRB interview § 87(2)(b) acknowledged that she did

not specifically recall seeing § 87(2)(b) climbing over the car but stated that § 87(2)(b) could have been one of the half-dozen protesters she had seen making their way over the car's hood. At this time § 87(2)(b) read and recorded "Kopinski" off of the nearest officer's nameplate; she recalled that he had no badge number displayed. § 87(2)(b) was unaware whether § 87(2)(b) and Lt. Kopinski had been involved in a verbal exchange; she, herself, had no conversation with Lt. Kopinski. § 87(2)(b)'s interaction with § 87(2)(b) ended after they exchanged e-mail addresses.

Officer interview: Lt. Keith Kopinski

On February 15, 2003 Lt. Keith Kopinski was assigned as the second platoon commander for the 103rd Precinct between the hours of 8:00 AM and 4:35 PM at Manhattan's anti-war demonstration. Lt. Kopinski was assigned to a "side-street" and was responsible for prohibiting pedestrian traffic onto 51st Street (aside from individuals who lived or worked on the block). Lt. Kopinski stated that he was assigned four sergeants each of whom had eight officers (assigned to him/her); he could not recall the names of the officers who were also present at this location. Lt. Kopinski recalled his "brief" interaction with § 87(2)(b) while at the corner of 51st Street and 3rd Avenue where there "were a number of barricades erected...part of [which] was created by a 71st Precinct RMP that was parked and facing westbound." The mounted unit approached the group of protesters, "attempting to disperse" the group which resulted in "five or six (protesters) sitting on the hood-area of the RMP." Lt. Kopinski confirmed that at this time, the demonstrators were effectively restricted to an area of limited space without egress. The lieutenant stated that "when the horses came in, [the protesters] thought they were going to get crushed, so they moved up on the car. But when the horses left, they got off (of the RMP)." No verbal commands were issued to these individuals as Lt. Kopinski stated "it wasn't necessary; as soon as they could, they got off (of the RMP)."

After these demonstrators climbed down from the RMP, approximately thirty seconds elapsed until § 87(2)(b) climbed onto the car; she was the only person situated on the RMP at this time. Lt. Kopinski recalled, "I was kind of surprised [that she was] sitting in the center of the hood of the car...I could not see the reason why she would do that." Lt. Kopinski stated that between one or two officers (whom he was unable to identify) asked § 87(2)(b) "get off the hood, get off the hood." When Lt. Kopinski noted § 87(2)(b)'s failure to comply with these orders, he personally requested that § 87(2)(b) "get off the hood." § 87(2)(b) did not verbally respond to the requests being made and instead she was "just sitting" on the car which the lieutenant felt was an act of her "being passively aggressive."

After between twenty and thirty seconds, Lt. Kopinski walked around the rear of the RMP and stood alongside the front passenger door. He re-issued his request one last time to § 87(2)(b) whose back was facing him. When she did not respond, Lt. Kopinski acted to remove § 87(2)(b). He described his physical contact as follows: "(I'm left handed) - I grabbed her (with my left hand) by her shoulder - her clothes - and slid her across the hood to the edge of the car." He estimated that the physical contact elapsed over two to three seconds during which she was not resistant and instead just "slid" across of the hood while "sitting upright."

Lt. Kopinski could not recall whether he continued with his verbal commands during this time. While Lt. Kopinski could not recall if any protesters had physical contact with § 87(2)(b) he was certain that no other officers had their hands on her. The lieutenant also stated that he was "positive" that he "only removed one protester from the hood." The lieutenant testified that § 87(2)(b)'s "head was nowhere near the ground" and that once she "was off that car, that was it." He did not recall having any verbal communication with § 87(2)(b) and stated that she did not ask for his name or for a shield number. Lt. Kopinski did observe members of the Legal Aide Society (identified by the armbands they were wearing) writing his name down; he did not have conversation with these individuals. Lt. Kopinski had no further interaction with § 87(2)(b) and never heard her indicate her intention to file a complaint against him.

Conclusions and Recommendations

§ 87(2)(g)

Allegation a: Lt. Keith Kopinski used physical force against § 87(2)(b)

There are four primary circumstances that are in dispute between the testimony provided by § 87(2)(b) and Lt. Kopinski concerning the lieutenant's use of force. The inconsistencies concern the following: the crowd's activity at the time § 87(2)(b) was atop the RMP, § 87(2)(b)'s original position on the vehicle, whether Lt. Kopinski issued § 87(2)(b) verbal commands to get off of the car, and the manner in which § 87(2)(b) was removed from atop the car.

§ 87(2)(b) stated that twenty minutes after mounted police officers began to compact the group of which she was a part, her body was positioned such that she was bent backwards at a severe angle. As the group continued to condense, § 87(2)(b) found herself "pushed against the front hood" of a police vehicle where her "legs were sort of tangled in the crowd." After having "withdrawn" her legs from the crowd, she was "half-sitting on the front hood" of the car and began to tie her shoe. Lt. Kopinski testified that, while demonstrators had been physically compacted – prompting a number of them to crawl onto the RMP for egress – the mounted unit had already pulled back at the time when he observed § 87(2)(b) on the RMP. He recalled that, unlike the demonstrators who had scrambled onto (and across) the car, § 87(2)(b) was stationary and sitting alone and "without apparent purpose" in the middle of the vehicle's hood. § 87(2)(g) while both acknowledged that there was disorder at the intersection, Lt. Kopinski stated that it had subsided at the time when he first observed § 87(2)(b) atop the RMP and § 87(2)(b) indicated that it was the chaos that "pushed" her onto the car.

§ 87(2)(b) asserted that she did not hear any sort of verbal command given during the approximate twenty-five minutes she was "penned" in with the large group of demonstrators at the intersection. Legal observer § 87(2)(b) confirms that no loudspeakers or megaphones were used to provide instruction to the crowd. § 87(2)(b) indicated that even immediately prior to the time when Lt. Kopinski grabbed her collar and began to slide her over the RMP, she did not hear any instructions provided (by the lieutenant or any additional officers present). Lt. Kopinski testified that he began to issue § 87(2)(b) commands to "get off (of the RMP)" when he observed her refusing to climb down from the car after multiple officers asked her to do so. The lieutenant described how he approached the passenger side of RMP and asked § 87(2)(b) twice to again "get off (of the RMP)" before he placed his hands on her. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) described being "jerked" over the car's hood by the collar of her jacket and stated that, at one point, she was lying with her back flat against the hood. She further asserted that after the lieutenant pulled her backwards and down towards the sidewalk curb he did not help her off of the vehicle; instead, it was fellow demonstrators who prevented her head from hitting the curb and ultimately assisted her in standing upright. While § 87(2)(b) did not receive injury as a result of the exchange, she felt that had it not been for fellow demonstrators, she might have fallen to the ground and been hurt. Lt. Kopinski stated that he only "slid" § 87(2)(b) off of the car, a process that took no more than three seconds. The lieutenant explained that he grabbed § 87(2)(b)'s shoulder, and possibly her arm, to ensure that she remained in an upright and seated position during their physical interaction. Lt. Kopinski also stated that it was unnecessary for him to assist § 87(2)(b)

§ 87(2)(b) in standing up as she was ultimately able to climb off of the car under her own power. § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

By all accounts, § 87(2)(b) was *not actively moving across the RMP* at the time when Lt. Kopinski observed her. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

According to Patrol Guide Procedure (203-11), an officer can use minimal physical force against an individual in an effort to maintain order and ensure the safety of those in the immediate vicinity, including the officer him or herself (*enc. 2a-b*). This discretionary use of force is coupled with a separate Patrol Guide Procedure (200-02) which states that an officer's main objective is "to enforce the law, preserve the peace, reduce fear, and maintain order" (*enc. 1b*). In a chaotic environment such as a public demonstration, a civilian's understanding of what actions might "preserve peace, reduce fear and maintain order" might be very different from an officer's perspective on how such an objective should be met. § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

In *PD. v. Medina*, Administrative Law Judge Maldonado ruled on a similar case, where an officer physically removed a civilian from atop a radiator after the civilian testified to not having heard the officer's orders to climb down (*OATH index No. 2283/00 (Sept. 26, 2000)*, *enc. 3a-f*). ALJ Maldonado determined that the officer's "course of action may not have been ideal, but neither was it sanctionable misconduct." § 87(2)(g)

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Allegation b: Lt. Keith Kopinski refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) stated that she read Lt. Kopinski's name off of his name plate after she had been removed from the RMP; in fact, she stated that she first read it while upside down and confirmed that she had done so correctly once she had righted herself on the sidewalk. She described the exchange as simple – she stated, “Kopinski” to which he gave no response. When she did not see a shield number and asked the lieutenant to provide the number he replied, “I don’t have one.” § 87(2)(g)

§ 87(2)(b) In *NYPD v. Napoleoni*, Administrative Law Judge Lewis cited *NYPD v. Nicastro* when she ruled that “a demand for a badge number necessitates an affirmative response” (*NYPD v. Nicastro*, OATH Index No. 1623/00 (Oct. 12, 2000); *Police Department v. Napoleoni*, OATH Index Nos. 1815-16/00 (Jan. 9, 2001), *enc. 5a-ff*). Based upon § 87(2)(b)'s testimony, Lt. Kopinski fulfilled this requirement when he replied to her request, “I don’t have [a badge number].”

NYPD lieutenants do not have shield numbers. § 87(2)(g)

§ 87(2)(b) In *NYPD v. Tirado*, an officer was cited for misconduct based upon his faulty assumption that he did not need to articulate his shield number because it could be read from his badge ([*Police Department v. Tirado*, OATH Index No. 1977/00 (Oct. 6, 2000), *modified on penalty*, Com’r Decision (Dec. 12, 2000), *enc. 4a-k*). § 87(2)(g)

§ 87(2)(g)

Investigator:

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Supervisor:

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Reviewed by:

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